

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

February 10, 2009 Session

JEFFREY LEE HAMMONS v. STATE OF TENNESSEE

Appeal from the Criminal Court for Davidson County
No. 2005-A-428 J. Randall Wyatt, Jr., Judge

No. M2008-00373-CCA-R3-PC - Filed August 17, 2009

Petitioner, Jeffrey Lee Hammons, appeals a Davidson County court's dismissal of his petition for post-conviction relief in which he alleged that he received ineffective assistance of counsel and that his guilty plea was unknowing and involuntary. After a review of the record, we conclude that Petitioner failed to show that his guilty plea was entered involuntarily or that he received ineffective assistance of counsel. Accordingly, the judgment of the post-conviction court is affirmed.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court is Affirmed.

JERRY L. SMITH, J., delivered the opinion of the court, in which DAVID H. WELLES and THOMAS T. WOODALL, JJ., joined.

David A. Collins, Nashville, Tennessee, for the appellant, Jeffrey Lee Hammons.

Robert E. Cooper, Jr., Attorney General and Reporter; Brian Clay Johnson, Assistant Attorney General; Victor S. Johnson, District Attorney General; and Kyle Anderson, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Petitioner was indicted by the Davidson County Grand Jury in March of 2005 for especially aggravated robbery, attempted first degree murder, and filing a false report after an incident in which Petitioner allegedly instructed his dog, a pit bull, to attack a man and then robbed the man of some pills and a gold necklace.

On September 9, 2005, Petitioner pled guilty to aggravated robbery and aggravated assault. During the plea colloquy, the State's attorney summarized the proof that would have been presented at trial as follows:

[I]f this case had gone to trial the state would have subpoenaed witnesses who would have testified under oath that on October 14th of 2004, at 727 Bell Road here in Nashville, that James Brandon Batey was at the home of Terrell Wiley, with some other friends of his.

Terrell Wiley mistakenly thought that one of Mr. Batey's friends had gone off with her dog. She called [Petitioner] on the phone, put [Petitioner] on the phone with Mr. Batey and [Petitioner] said something to the effect of, "You'd better get that dog back or I'm going to come over there and kill you."

It turns out the dog never was missing, it was in the apartment the entire [t]ime.

Mr. Batey, being legally blind, could not drive, could not find a ride to get away from the apartment before [Petitioner] came over.

[Petitioner] came over, found him, punched him, kicked him, and got out a pit bull dog that he had and sicced the dog on Mr. Batey.

Mr. Batey suffered injuries resulting in the near loss of both ears, lacerations across the throat, lacerations on his biceps and other parts of the body.

Also, Mr. Batey at that time possessed a gold necklace which was taken from him, money from his pocket and Xanax drugs.

Petitioner was ordered to serve a total effective sentence of twenty years as a Range II offender as a result of the guilty plea.

Subsequently, on September 13, 2006, Petitioner filed a pro se petition for post-conviction relief. In the petition, Petitioner alleged that: (1) there was evidence suppressed by the State; (2) prosecutorial misconduct occurred; (3) he received an illegal sentence; (4) he received ineffective assistance of counsel; and (5) he entered a "constitutionally-defective plea." The post-conviction court dismissed the petition as untimely in an order entered on September 20, 2006.

As a result, Petitioner filed a motion to reconsider. The post-conviction court granted the motion on October 27, 2006, and appointed counsel to represent Petitioner during the post-conviction proceedings.

Petitioner filed a pro se motion to "dismiss court-appointed counsel for negligence, malfeasance and unprofessional conduct" on February 28, 2007. Counsel filed an amended petition for post-conviction relief on May 10, 2007. In that petition, Petitioner alleged that he received ineffective assistance of counsel because counsel: (1) refused to interview witnesses; (2) failed to procure DNA testing to rule out Petitioner's dog as the animal who attacked the victim; (3) failed

to “procure bite mark comparisons;” (4) failed to stop the euthanization of the dog prior to any testing; (6) failed to attack the credibility of the State’s witnesses; (7) allowed Petitioner to plead out of his sentencing range; and (8) coerced him into entering a guilty plea.

Evidence at the Post-conviction Hearing

The post-conviction court held a hearing on the petition that took place over several days. Petitioner testified that he was represented by two attorneys from the Public Defender’s office. Petitioner had numerous complaints about his representation. Petitioner informed the post-conviction court that he asked trial counsels to speak with people at an auto repair shop on Nolensville Road but they failed to investigate this lead. According to Petitioner, he lent his friend, Christopher Woodall, his Ford Explorer. Petitioner alleged that Mr. Woodall had his vehicle on the date of the offense. Petitioner also asked trial counsels to talk to Mr. Woodall about Terrell Wiley because they were cousins and Mr. Woodall would have an opinion about Wiley’s reputation for honesty.

Petitioner also informed the post-conviction court that it was his desire for his trial attorneys to procure a DNA test or bite mark comparison on the victim and the pit bull, Hollywood. According to Petitioner, his dog was not the attacker. Petitioner stated that Wiley had a bit bull named Alexis and that it was this dog that injured the victim.

Petitioner also alleged that he told his lawyers to talk with animal control and a doctor at Donelson Animal Hospital who could have testified that Hollywood was non-violent.

Petitioner also complained that his lawyers did not: (1) obtain criminal records of the State’s witnesses, including the victim; (2) did not speak with the neighbors; and (3) did not interview his mother or nephew, who both lived with him at the time of the incident. Petitioner thought that two of his neighbors would have also testified that he was home at the time of the offense.

Despite his testimony about his unhappiness with his guilty plea, Petitioner admitted that he pled guilty voluntarily at the plea submission hearing. He explained that he “was scared” in part because of trial counsels’ explanation of the possible consequences of not pleading guilty and going to trial. Further, Petitioner stated that he did not know that he could tell the trial court that he did not want to plead guilty but wanted a trial instead. Petitioner explained that he felt that he “didn’t have no [sic] choice to do nothing [sic] in the matter until [he had] been incarcerated and read up in the law books that says where you have a choice.” Petitioner also did not think that his trial lawyers were prepared for the case.

On cross-examination, Petitioner claimed he did not know of the plea offer until the day that he pled guilty. According to Petitioner, the only plea offer he knew of prior to that time was fifteen years at 85%. Petitioner agreed that trial counsels read the plea agreement to him. With regard to the plea, Petitioner remembered going over several “rights” with the trial court prior to the plea, including the right to have witnesses subpoenaed on his behalf. Petitioner testified that he expressed

his desire for new lawyers to replace the public defenders. Petitioner also asserted that if he had been asked at the plea hearing, he would have informed the trial court that he was not satisfied with his representation because “[t]hey didn’t investigate all the people I thought they should have.” Petitioner admitted, however, that he pled guilty based on the proposed facts presented by the State at the plea hearing.

Petitioner called Dr. Tina Fisher, an employee of the State of Tennessee at the Ellington Agricultural Center in the Animal Disease Diagnostic Laboratory, to testify. According to Dr. Fisher, the Tennessee lab does not have animal DNA capabilities, but she worked with animal DNA when she was at Washington State University. Dr. Fisher testified that using DNA can allow investigators to determine whether a particular dog bit a particular person. Dr. Fisher also testified concerning bite mark comparisons. She explained that it is not an exact science but that certain testing could be done to exclude an animal as the biter. Dr. Fisher explained that it is necessary for a picture of bite marks to contain a ruler scale for comparison. She noted that the photographs in Petitioner’s case did not have a ruler scale. Dr. Fisher noted that it would most likely been impossible to do a bite mark comparison based solely on narrative testimony. However, Dr. Fisher felt that if the testimony were specific as to the location of the wounds and their proximity to each other she might have been able to rule out a dog as the biter.

Billy Biggs, a field operations supervisor for Metro Animal Control, also testified. Animal Control seized six dogs from Petitioner’s residence after the incident. It was unknown, at that time, which of the dogs attacked the victim. Mr. Biggs later learned that a black and white dog named Hollywood attacked the victim. The animals were held for a long time before being euthanized.

Kenneth Joseph, Petitioner’s nephew, testified that he was living with Petitioner at the time of the incident. At the time, he was twelve or thirteen years of age. Mr. Joseph could see cars parked in the driveway from his bedroom window. Around 1:45 a.m. on the day of the incident, Mr. Joseph heard what he thought was someone beating on a window of the house. He went to Petitioner’s room because he was scared but did not see who was banging on the window. Petitioner did not leave on the night of the offense because, according to Mr. Joseph, it would have been impossible for Petitioner to open his door without Mr. Joseph hearing it. Mr. Joseph informed the post-conviction court that Petitioner’s trial lawyers did not contact him about the case.

Petitioner’s neighbor, Jason Tignor, was watching movies on the night of the offense. He stated that he did not fall asleep until around 3:00 or 4:00 a.m. Mr. Tignor testified that he could have seen or heard any vehicle that was entering or exiting Petitioner’s driveway. He did not recall seeing any vehicles enter or exit that night. Further, Mr. Tignor testified that Petitioner’s lawyers did not contact him about Petitioner’s case.

Petitioner’s mother, Sally Hammons, claimed that the trial attorneys did not contact her about the night of the offense even though she lived with Petitioner. Ms. Hammons lived in the mother-in-law’s apartment behind her son’s residence. Ms. Hammons testified that she could hear vehicles entering and exiting even when she had her television on. She “pretty much” remembered what

happened that night even though she had just gone to sleep because she recalled hearing a noise around 1:30 or 2:00 a.m. Ms. Hammons saw a vehicle and someone “knocking and hollering.” Ms. Hammons did not think that it was Petitioner’s car she saw or heard.

Chris Woodall also testified at the hearing. Petitioner claimed that he asked his attorneys to secure Mr. Woodall as a witness at trial, and they failed to honor his request. Mr. Woodall confirmed that he was never contacted by the defense team. Mr. Woodall was Petitioner’s friend. He lived at the Archstone Apartments where the offense occurred. Ms. Wiley was Mr. Woodall’s cousin. According to Mr. Woodall, Ms. Wiley used drugs and was not a credible witness. She owned at least one pit bull on the date of the offense that was reddish in color. Mr. Woodall also confirmed that Petitioner had taken his vehicle to an auto repair shop on Nolensville Road.

Corey Taylor, an officer with the LaFollette Police Department, lived next door to Petitioner. Officer Taylor explained that he lived close enough to Petitioner to be able to hear if a vehicle was entering or exiting the premises but that he would probably not hear the vehicles if he was not paying attention. He was not aware whether any vehicles entered or exited Petitioner’s residence on the night of the offense. Officer Taylor recalled speaking with either the trial attorneys or an investigator about the incident.

Detective James Chastain was the lead detective on the case. Detective Chastain said that the police were able to get a description of the human attacker, Petitioner’s license plate number, a description of the vehicle, and a very detailed description of Petitioner, including the fact that he had a ponytail and tattoos. Several 911 calls were received that night. They indicated: (1) people heard screaming outside; (2) a subject was then seen running in a breezeway banging on doors, attempting to get away; (3) a large fight was taking place; (4) a male and female were fighting, and then a dog was let loose on another male; (5) the victim was screaming about being attacked by a dog; (6) the attacker was tall and thin with a tattoo; (7) a female was loading a dog into Petitioner’s car; and (8) a black male helped the victim after he was attacked.

Lastly, Petitioner called Barbara Wise, the “in-court” clerk for Davidson County Criminal Court to testify. According to Ms. Wise, the Petitioner’s file contained a letter sent by Petitioner to his attorneys in which he complained about their performance. Ms. Wise did not think that the letter was treated as a motion because of the fact that it was filed pro se. She could not recall if she forwarded the letter to the defense attorneys in Petitioner’s case but testified that she “normally” forwarded pro se letters on to the lawyers in a case.

Petitioner was represented at trial by an Assistant Public Defender and the District Public Defender. The attorneys both met with Petitioner on numerous occasions prior to his guilty plea. Both informed Petitioner of the consequences of pleading guilty and the options that were available in lieu of a guilty plea.

The assistant public defender did some preliminary investigation prior to the plea and determined that Petitioner was a Range II offender because he had the requisite number of prior convictions. The assistant reviewed the judgment sheets on file to make this determination.

The assistant was able to testify that the defense team met with Petitioner at least eleven times. Initially, a different attorney with the office was assigned to Petitioner's case but this assistant took over the case after the first attorney left the office. The meetings between the defense lawyers and Petitioner were noted in a computer program. In addition to these meetings, the assistant had logged 4.8 hours "fact-finding" and sixteen hours of legal research.

The assistant public defender recalled that two of the investigators in the office worked on Petitioner's case. They interviewed the victim and Ms. Wiley in preparation for trial. The investigators attempted to find Mr. Woodall but were unsuccessful. The assistant sought Mr. Woodall at Petitioner's insistence that Mr. Woodall was in possession of his vehicle on the night of the incident. The attorney recalled speaking with one or two of Petitioner's neighbors in preparation for trial. The defense team discussed the State's evidence with Petitioner, including a damaging piece of evidence from a 911 call. The 911 call was from a person who had nothing to do with the attack. The person gave a description of Petitioner's vehicle with the license plate number. The defense attorneys also discussed other evidence that the State would present, including the potential testimony of Ms. Wiley and Mr. Batey.

The assistant attempted to contact Petitioner's mother on two occasions, both at home and at work. He eventually spoke with her and learned that she lived in a residence close to Petitioner's house. The lawyers did not speak with Mr. Joseph but felt that his testimony would have been beneficial if it was believable.

The assistant public defender attempted to talk to neighbors who lived around the site of the offense but discovered that most of the people had moved by the time the investigation started.

The assistant public defender remembered that the initial offer in Petitioner's case was twenty years at 100%. The offer improved after the assistant shared the investigator's findings. There was a lot of back and forth negotiation in regard to the plea and the defense team discussed the offers with Petitioner.

The assistant testified that he received a copy of the letter from Petitioner in which he expressed his dissatisfaction with his attorneys' performance. When the defense team received the letter, they spoke with Petitioner. The notes from the file indicated that Petitioner was upset because "[h]e did not feel like we were working his case." During the meeting, his attorneys informed Petitioner that if he was "not comfortable" with their representation they would ask the judge to appoint different counsel. The assistant did not seek a withdrawal from the case after the meeting with Petitioner because he felt like Petitioner was comfortable with their representation.

The assistant public defender informed the post-conviction court that he was not familiar with using DNA on animal cases. He remembered discussing the matter briefly with the district public defender, but they chose not to pursue the matter. The district public defender agreed with the assistant public defender about DNA and bite mark analysis in that it was not an area they wished to pursue.

The district public defender testified that he was co-counsel on the case. The district public defender corroborated most of assistant public defender's testimony. He was also aware of the letter in which Petitioner expressed his discontent with his office's representation. He recalled meeting with Petitioner at least once regarding this issue and after the meeting was under the impression that Petitioner still wanted his office to represent him. The district public defender believed that Petitioner was well informed about his guilty plea and understood the consequences of the plea. In fact, he described Petitioner as a proactive client who shared a lot of information.

At the conclusion of the hearing, the post-conviction court took the matter under advisement. In an order filed on January 23, 2008, the post-conviction court found that Petitioner failed to "carry his burden" to show that he received ineffective assistance of counsel. Further, the post-conviction court determined that the public defender's office "represented the Petitioner in a competent and thorough manner" by being "diligent in informing the Petitioner of the State's case against him and preparing the Petitioner for his subsequent guilty plea." According to the post-conviction court, the trial attorneys "made sound strategic decisions based on their extensive experience." Finally, the post-conviction court determined that Petitioner's plea "was entered into knowingly, voluntarily, and intelligently." As a result, the post-conviction court denied the petition for relief.

Analysis *Post-Conviction Standard of Review*

The post-conviction court's findings of fact are conclusive on appeal unless the evidence preponderates otherwise. *See State v. Burns*, 6 S.W.3d 453, 461 (Tenn. 1999). During our review of the issues raised, we will afford those findings of fact the weight of a jury verdict, and this Court is bound by the post-conviction court's findings unless the evidence in the record preponderates against those findings. *See Henley v. State*, 960 S.W.2d 572, 578 (Tenn. 1997); *Alley v. State*, 958 S.W.2d 138, 147 (Tenn. Crim. App. 1997). This Court may not reweigh or re-evaluate the evidence, nor substitute its inferences for those drawn by the post-conviction court. *See State v. Honeycutt*, 54 S.W.3d 762, 766 (Tenn. 2001). However, the post-conviction court's conclusions of law are reviewed under a purely de novo standard with no presumption of correctness. *See Shields v. State*, 40 S.W.3d 450, 458 (Tenn. 2001).

Ineffective Assistance of Counsel

When a petitioner seeks post-conviction relief on the basis of ineffective assistance of counsel, the petitioner bears the burden of showing that (a) the services rendered by trial counsel were deficient and (b) that the deficient performance was prejudicial. *See Powers v. State*, 942

S.W.2d 551, 558 (Tenn. Crim. App. 1996). In order to demonstrate deficient performance, the petitioner must show that the services rendered or the advice given was below “the range of competence demanded of attorneys in criminal cases.” *Baxter v. Rose*, 523 S.W.2d 930, 936 (Tenn. 1975). In order to demonstrate prejudice, the petitioner must show that there is a reasonable probability that, but for counsel’s deficient performance, the result of the proceeding would have been different. *See Strickland v. Washington*, 466 U.S. 668, 694 (1984). “Because a petitioner must establish both prongs of the test to prevail on a claim of ineffective assistance of counsel, failure to prove either deficient performance or resulting prejudice provides a sufficient basis to deny relief on the claim.” *Henley v. State*, 960 S.W.2d 572, 580 (Tenn. 1997).

As noted above, this Court will afford the post-conviction court’s factual findings a presumption of correctness, rendering them conclusive on appeal unless the record preponderates against the court’s findings. *See id.* at 578. However, our supreme court has “determined that issues of deficient performance by counsel and possible prejudice to the defense are mixed questions of law and fact . . . ; thus, [appellate] review of [these issues] is de novo” with no presumption of correctness. *Burns*, 6 S.W.3d at 461.

Furthermore, on claims of ineffective assistance of counsel, the petitioner is not entitled to the benefit of hindsight. *See Adkins v. State*, 911 S.W.2d 334, 347 (Tenn. 1994). This Court may not second-guess a reasonably-based trial strategy, and we cannot grant relief based on a sound, but unsuccessful, tactical decision made during the course of the proceedings. *See id.* However, such deference to the tactical decisions of counsel applies only if counsel makes those decisions after adequate preparation for the case. *See Cooper v. State*, 847 S.W.2d 521, 528 (Tenn. Crim. App. 1992).

Once a guilty plea has been entered, effectiveness of counsel is relevant only to the extent that it affects the voluntariness of the plea. In this respect, such claims of ineffective assistance necessarily implicate the principle that guilty pleas be voluntarily and intelligently made. *See Hill v. Lockhart*, 474 U.S. 52, 56 (1985) (citing *North Carolina v. Alford*, 400 U.S. 25, 31 (1970)). As stated above, in order to successfully challenge the effectiveness of counsel, Petitioner must demonstrate that counsel’s representation fell below the range of competence demanded of attorneys in criminal cases. *See Baxter*, 523 S.W.2d at 936. Under *Strickland v. Washington*, 466 U.S. 668, 694 (1984), the petitioner must establish: (1) deficient representation; and (2) prejudice resulting from the deficiency. However, in the context of a guilty plea, to satisfy the second prong of *Strickland*, Petitioner must show that “there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” *Hill*, 474 U.S. at 59; *see also Walton v. State*, 966 S.W.2d 54, 55 (Tenn. Crim. App. 1997).

When analyzing a guilty plea, we look to the federal standard announced in *Boykin v. Alabama*, 395 U.S. 238 (1969), and the State standard set out in *State v. Mackey*, 553 S.W.2d 337 (Tenn. 1977). *State v. Pettus*, 986 S.W.2d 540, 542 (Tenn. 1999). In *Boykin*, the United States Supreme Court held that there must be an affirmative showing in the trial court that a guilty plea was voluntarily and knowingly given before it can be accepted. *Boykin*, 395 U.S. at 242. Similarly, our

Tennessee Supreme Court in *Mackey* required an affirmative showing of a voluntary and knowing guilty plea, namely, that the defendant has been made aware of the significant consequences of such a plea. *Pettus*, 986 S.W.2d at 542.

A plea is not “voluntary” if it results from ignorance, misunderstanding, coercion, inducements, or threats. *Blankenship v. State*, 858 S.W.2d 897, 904 (Tenn. 1993). The trial court must determine if the guilty plea is “knowing” by questioning the defendant to make sure he fully understands the plea and its consequences. *Pettus*, 986 S.W.2d at 542; *Blankenship*, 858 S.W.2d at 904.

Alleged Factual Errors by the Post-conviction Court

First, Petitioner contends on appeal that the order dismissing his petition contains “factual errors” and that if the factual errors were corrected, the post-conviction court would have granted the petition. We find no merit in this argument. Petitioner contends that the order states he was sentenced to fifteen years rather than twenty. This is a mischaracterization of the order. The order recounts a plea offer from the State of fifteen years at 100%, not that Petitioner was sentenced to fifteen years. Next, Petitioner contends that the post-conviction court found that there was no capability in Tennessee to perform animal DNA or bite mark comparison. However, in reality, the post-conviction court determined, instead that “even if animal DNA testing could have been utilized” Petitioner failed to establish that the testing would have benefitted the defense. Petitioner also contends that the post-conviction court failed to note the testimony of Mr. Biggs regarding potential animal bite mark comparison. In fact, the post-conviction court had already determined that bite mark testing would not have been beneficial so it was unnecessary to note the testimony of Mr. Biggs. Next, Petitioner argues that the trial court mischaracterized the testimony offered about the auto repair shop. We deem Petitioner’s argument irrelevant, as the post-conviction court determined that there were no witnesses offered by Petitioner who could corroborate his claims that Mr. Woodall was using his vehicle at the time of the offense. In fact, Mr. Woodall testified that Petitioner worked on his car at the repair shop but did not specify whether Petitioner had loaned him his vehicle at any time. We find no “factual errors” in the post-conviction court’s order that, if corrected, would change the outcome of the post-conviction hearing.

In its order denying relief, the post-conviction court herein found that Petitioner did not prove his allegations by clear and convincing evidence. That conclusion is supported by the great preponderance of the evidence.

Sentencing Range

Petitioner argues that his counsel allowed him to plea out of the range. Specifically, Petitioner contends that he involuntarily pled guilty because his attorneys “had” him plead outside his sentencing range. Petitioner contends that he was a Range I offender. The trial attorneys testified that they were both aware that Petitioner was a Range II offender and had discussed that fact with Petitioner. The lawyers testified that they explained the plea agreement to Petitioner and the

plea colloquy reveals that Petitioner was made aware that he was serving his sentence as a Range II offender. Further, Petitioner's guilty plea colloquy, which is included in the record, demonstrates that he agreed that he understood the plea agreement and that the trial court fully explained both the charges and the corresponding sentences. During the plea colloquy, Petitioner admitted that he understood his rights and the sentence he was about to receive and was ready to plead guilty. However, at the post-conviction hearing, Petitioner claimed that he was "coerced" into the plea by his trial lawyers because they were not prepared for the case. Petitioner did not present any proof other than his own testimony at the post-conviction hearing to corroborate his claims regarding the plea, and it is apparent the post-conviction court did not find his testimony credible. This issue is without merit.

Adequacy of Investigation

Petitioner also argues that trial counsels provided ineffective assistance of counsel because they: (1) did not adequately investigate the case; (2) did not procure animal DNA testing or bite mark analysis; (3) did not prohibit the euthanization of his dog; (4) did not run criminal background checks on all of the accusers; (5) made Petitioner plea outside his sentencing range; and (6) were unable to assess Petitioner's chances at trial because of their ineffectiveness. However, these assertions are not borne out by the record. The trial attorneys both testified that they utilized investigators to work on Petitioner's case and interviewed potential witnesses prior to the plea agreement. The post-conviction court found that the information given by these witnesses at the post-conviction hearing would not have been beneficial to Petitioner's case. Petitioner has not proven that he would have insisted on going to trial had it not been for the alleged inadequacies of his attorneys.

Petitioner also complains that he was forced to plead guilty because the trial attorneys did not procure DNA bite mark testing or prevent the euthanization of his dog. Petitioner failed to admit evidence at the post-conviction hearing that would have supported his claims. While he admitted the testimony of Dr. Fisher, she admitted that she would be unable to make a bite mark comparison on pictures without some sort of scale on them to compare the size of the bite marks. Petitioner has failed to sustain his burden. This issue is without merit.

Finally, Petitioner argues that the trial attorneys could not adequately assess his ability to be successful at trial because of their gross ineffectiveness. In other words, the cumulative effect of trial counsels' errors led to ineffective assistance of counsel. We have already determined that none of Petitioner's allegations merit relief. Thus, this issue is without merit.

Petitioner did not prove any of his allegations by clear and convincing evidence. Petitioner has not proven that services rendered by his counsel were insufficient. He has likewise not proven that but for his attorneys alleged omissions he would have gone to trial instead of pleading guilty. The record amply supports the post-conviction court's determination that Petitioner received the effective assistance of counsel and entered his plea voluntarily and knowingly.

Conclusion

For the foregoing reasons, the judgment of the post-conviction court is affirmed.

JERRY L. SMITH, JUDGE